

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

DONALD LAVERNE STEINMAN,)	
)	DOCKET NO: IT-1999-1
Appellant,)	
)	
-vs-)	
)	STATEMENT OF THE ISSUE,
THE DEPARTMENT OF REVENUE)	CONCLUSIONS OF LAW,
OF THE STATE OF MONTANA,)	ORDER AND OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>
Respondent.)	

The above-entitled appeal was heard on February 23, 2000 in Bozeman, Montana. The taxpayer did not appear for the scheduled hearing. The Department of Revenue was represented by Brendan Beatty, tax counsel with the Office of Legal Affairs, Department of Revenue, and Brenda Price, an auditor with the Compliance, Valuation and Resolution Unit of the Department of Revenue. The notice of the hearing was duly given as required by law. However, the taxpayer returned the notice of hearing for the reason that he claimed it contained an incorrect reference regarding his name and his postal address. The Board reissued its hearing notice, making the requested changes to the taxpayer's name and postal address. The second hearing notice, sent via certified mail, was also returned with a notation that said notice was "inadvertently received and opened by mistake. The enclosed documents appear to be (1) a letter of

acknowledgement (2) a hearing notice and they are not understandable or recognizable. Therefore, under the penalty of false personation, must be returned. The enclosure herein contains the aforementioned and misdirected documents as there is not enough knowledge or information disclosed to form a responsive answer and said documents are being returned forewith."

The Board, being well and fully informed in the premises, finds and concludes as follows:

STATEMENT OF THE ISSUE

The taxpayer did not file Montana individual income tax returns for the tax years 1990, 1991, 1992, 1993 and 1995. Apparently, Mr. Steinman does not believe he is a taxpayer and is, therefore, not subject to any requirement to file Montana individual income tax returns.

DEPARTMENT OF REVENUE'S CONTENTIONS

Mr. Beatty moved this Board for a default order in favor of the DOR in view of the taxpayer's failure to appear and to provide testimony and evidence. The Board denied the motion and allowed the hearing to proceed.

The DOR contended that Mr. Steinman did earn sufficient income, as defined by Internal Revenue Service code and the Montana Code Annotated, to require him to file tax returns. Mr. Steinman also raised some constitutional issues which the DOR

asserts are beyond the jurisdiction of the State Tax Appeal Board.

The DOR became aware of Mr. Steinman's failure to file Montana returns through IRS notification that he had not filed U.S. individual income tax returns for tax years 1990 and 1992. The DOR also found that Mr. Steinman did not file Montana returns for tax years 1991, 1993 or 1995. (For tax year 1994, the only income attributable to Mr. Steinman, according to DOR records, was \$1,832. He was required to file a return for 1994, but the DOR did not estimate his tax liability because it was determined that, with the standard deduction and his exemption allowance, Mr. Steinman would have a zero tax liability).

On June 20, 1995, the DOR contacted Mr. Steinman and asked him to file the missing returns. Mr. Steinman responded by stating that he was not a taxpayer and, therefore, not subject to taxation by the State of Montana.

The DOR's position is that Mr. Steinman is a taxpayer and is required to file individual income tax returns in Montana. Mr. Steinman is a carpet layer who performs contract work for various entities. In return for such work, he receives income which is subject to self-employment tax and reported via a 1099 miscellaneous form to the IRS. 1099 miscellaneous income is compensation that is not subject to state or federal or social security withholding taxes. The 1099 form lists compensation

earned as a contract (non-employee) laborer. This income should be reported on a Schedule C form to the IRS and also carried over to a Montana income tax return.

The DOR is also aware of W-2 income earned by Mr. Steinman in 1991 in the amount of \$6,701. W-2 income is wage income which is subject to state, federal and social security withholding taxes and is earned by an individual in an employee status.

Section 15-30-142 (1), MCA, requires that "each single individual and each married individual not filing a joint return with a spouse and having a gross income for the tax year of more than \$1,500, as adjusted under the provisions of subsection (7) . . . are liable for a return to be filed on forms and according to rules that the department may prescribe."

Section 15-30-101 (21), MCA, defines a taxpayer as "any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations." A party who earns 1099 miscellaneous income is subject to Montana individual income tax.

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On March 13, 1998, the DOR estimated Mr. Steiman's tax liability, including penalty and interest, due to his failure to file returns, to be as follows:

1990:	\$ 345.51
1991:	\$ 292.60
1992:	\$2,061.14
1993:	<u>\$ 178.38</u>
	\$3,168.94

This estimate was prepared, allowing Mr. Steinman a personal exemption and the standard deduction, through income information obtained from the IRS.

DISCUSSION

The Board finds that Mr. Steinman is a taxpayer, as defined in Section 15-30-101 (21), MCA, cited above and that his income was sufficient for the years in question to require the filing of Montana returns, pursuant to Section 15-30-142 (1), MCA, also cited above.

The DOR's estimated assessment is proper and in accordance with Montana statute. The subject taxes are due and owing.

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter pursuant to **Section 15-2-302, MCA.**

2. Mr. Steinman earned sufficient income, specified in **Section 15-30-142 (1), MCA,** during the years in question to

require the filing of returns for the years in dispute.

3. Mr. Steinman is a taxpayer, as defined in **Section 15-30-102 (21), MCA**, and subject to relevant statute pertaining to that status.

4. The appeal of the taxpayer is hereby denied and the decision of the Montana Department of Revenue is hereby affirmed.

ORDER

IT IS HEREBY ORDERED by the State Tax Appeal Board that the subject taxes are due and properly owing.

DATED this 25th day of February, 2000.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

(S E A L)

JAN BROWN, Member

JEREANN NELSON, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25th day of February, 2000, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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DONNA EUBANK
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